

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 471 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
Nos. 1 to 5 No

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BAROT RAJESHKUMAR

RUGHNATHBHAI

Versus

STATE OF GUJARAT  
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Appearance:

MR DJ BHATT for Petitioners

MR KC SHAH, APP for Respondent-State of Gujarat.  
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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 14/11/97

ORAL JUDGEMENT

This Criminal Revision Application has been filed by two petitioners against the orders dated 22.9.1997 passed by the Additional Sessions Judge, Mehsana in Criminal Appeal No.2 of 1997 read with the order passed by the learned JMFC, Kheralu on 29.1.1997 in Criminal Case No.587 of 1990. Both these two petitioners were convicted by the JMFC, Kheralu by his order dated

29.1.1997 for the offences under sections 323 and 325 of IPC as also under section 135 of the Bombay Police Act. For the offence under section 323 both the petitioners were sentenced to six months rigorous imprisonment and fine of Rs.250/- and in default to undergo simple imprisonment for a period of 45 days. For the offence under section 325 both the petitioners were sentenced to rigorous imprisonment for a period of one and half year and fine of Rs.500/- each and in default to undergo four months simple imprisonment. For the offence under section 135 of the Bombay Police Act, no separate sentences were awarded and the sentences were ordered to run concurrently. The appeal was partly allowed by the learned Additional Sessions Judge, Mehsana vide his order dated 22.9.1997, whereby the conviction was upheld but the sentence was reduced to three months rigorous imprisonment for each of the two petitioners and fine was enhanced to Rs.1,000/- each and in default simple imprisonment for fifteen days for the offence under section 323 of the IPC and simultaneously to suffer rigorous imprisonment for six months and to make payment of fine of Rs.1500/-each and in default simple imprisonment for 45 days for the offence under section 325 of the IPC and the sentences were ordered to run concurrently. The amount of fine recovered to be paid to the original complainant/injured to the tune of Rs.2500/- by way of compensation under section 357 of the Code of Criminal Procedure.

When this Criminal Revision Application came up before the Court on 1.10.1997 notice was issued and the sentence was suspended and the petitioners were directed to be released on bail. The report of the Probation Officer was also called for. Today when the matter came up before the Court both the sides prayed that the report of the Probation Officer has been received and the matter may be finally heard. Hence Rule. Mr.K.C.Shah, learned APP waives service of the Rule.

I have heard learned Counsel and have gone through the available record and have also perused the report of the Probation Officer. It is given out by the learned APP that according to the report of the Probation Officer, at present the petitioner No.1 is 27 years of age and petitioner No.2 is of 21 years of age. The date of the offence is 10.3.1990 and therefore, the petitioners can be taken to be below 21 years of age on the date of the commission of the offence. The Probation Officer has recommended that the petitioners may be given benefit of probation. It is not in dispute that it is the first offence of each of the two petitioners under

IPC and the sentence is less than ten years. Learned Counsel for the petitioners does not contest conviction but submit that in the facts and circumstances of this case, the petitioners may not be called upon to serve the sentence but may be given benefit of the probation under the Probation of Offenders Act, in view of the report received from the Probation Officer. The punishment is short of life imprisonment for the offences under sections 323 and 325 of IPC. It is also given out that the petitioner No.1 is Driver and petitioner No.2 is an Agriculturist.

In the facts and circumstances of the case and looking to the report of the Probation Officer, I am inclined to grant benefit of the probation to the two petitioners under section 6 of the Probation of Offenders Act and accordingly, it is ordered that the petitioners shall not be called upon to serve the sentence awarded to them by the Courts below and they will be released on furnishing a personal bond and the surety bond of good conduct for a period of two years. Each of the petitioners would furnish personal bond for a sum of Rs. 10,000/- (Rupees Ten thousand only) and the two surety bonds of Rs.5,000/- (Rupees Five thousand only) for each of the petitioners. In case the due amount of fine has not been deposited, the same shall be deposited by each of the two petitioners as ordered by the Additional Sessions Judge, Mehsana in the order dated 22nd September,1997 on or before 15th December,1997 and the amount of fine deposited by the petitioners shall be payable to the complainant injured as ordered by the Additional Sessions Judge, Mehsana in his dated 22nd September,1997. In case the petitioners furnish personal bonds and surety bonds for good conduct as ordered above and also deposit the due amount of fine as mentioned above they need not to surrender to their bailbonds. The report of the Probation Officer shall remain on record.

This Revision Application is accordingly allowed.  
Rule is made absolute in the terms as aforesaid. Direct service is permitted.

m.m.bhatt ---